Given the FCC's mandate that the 100 largest MSAs be LNP-capable by the end of last year, it may be appropriate for the thousand block order for these cities to come from the federal level. Beyond the 100 largest MSAs, state commissions should be given explicit authority to determine when and where to require implementation of number pooling. This scheme represents a reasonable compromise between federal and state jurisdiction. It would provide uniformity for the country's large urban areas, but would leave to the states decisions about implementation of pooling in areas outside the 100 largest MSAs. Areas outside the 100 largest MSAs will need to be reviewed on a case-by-case basis. Because of their familiarity with local circumstances, state commissions are in a better position to make decisions of this sort.[13]

Under paragraph 147, if states are given the authority to decide when and where to implement thousand block pooling outside the 100 largest MSAs and a state affirmatively gives up the right to make these decisions, the decision to implement pooling in these areas should be made by another entity—preferably NANPA or the FCC.

The PUCT supports the adoption of general criteria for the implementation of number pooling. However, as previously stated, the FCC should delegate the final decision on pooling implementation outside the 100 largest MSAs to the states. Moreover, any standards adopted by the FCC should be flexible enough to permit states to adapt them to local circumstances.

Under paragraphs 150, 151, and 152, the FCC should not unnecessarily restrict the applicability of number pooling. The FCC should not mandate detailed studies before pooling can be implemented. The effectiveness of thousand block number pooling has been amply demonstrated by the Illinois trial. Pooling can be used not only to save an existing NPA, but also

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[12] *Id.*.

to forestall the need for additional NPA relief in a new NPA. Also, as discussed previously, the effectiveness of rate center consolidation varies widely from region to region. Rate center consolidation therefore should not be a prerequisite to the implementation of number pooling.

In response to paragraph 161, the PUCT agrees that once CMRS providers are LNP-capable, they should also be required to implement thousand block pooling under the same standards adopted for wireline carriers.

Regarding paragraph 166, the PUCT disagrees with the proposal that pooling requirements for CMRS carriers be limited to specific NPAs or rate centers within the 100 largest MSAs. CMRS carriers should be subject to the same pooling requirements as wireline carriers when they become LNP-capable. While it may be unrealistic to accelerate the LNP implementation date for CMRS carriers, the PUCT notes that participation in pooling by wireless carriers would save additional numbers. As long as wireless carriers are permitted to draw numbers in 10,000 number blocks while their wireline counterparts are restricted to 1,000 number blocks, the benefits of number pooling cannot be fully realized. To reduce the amount of time needed for CMRS carriers to implement number pooling, these carriers should participate actively in development of pooling standards and begin planning now for their eventual participation in pooling. The PUCT urges the FCC to adopt the shortest reasonable time line possible for CMRS carriers to begin implementation of pooling.

In response to paragraph 182, the PUCT recommends that the FCC promptly adopt specific rules for thousand block pooling. As noted previously, the current CO Code Guidelines have proven ineffective. Therefore mandatory standards, enforced first by NANPA, (in

[13] The PUCT's efforts on number pooling, including its consideration of a virtual pooling trial, are discussed in detail on pages 20-25 of its comments on the NANC Report.

conjunction with the states), and then , if necessary, by the FCC, should be adopted as soon as possible to insure timely implementation of number pooling in those areas where it is desperately needed now.

The PUCT tentatively supports designation of the NANPA as the thousand block pooling administrator, depending on the costs NANPA will charge for this service and how NANPA, the FCC, or the industry proposes such costs will be collected. NANPA has served as the pooling administrator in the New York and Illinois trials and can utilize this experience in implementation of pooling on a broader basis. Appointment of NANPA as the pooling administrator for a specified time will be more efficient than appointing another third party provider at this time. Any contract with NANPA for pooling administration services should specifically delineate NANPA's powers and responsibilities. Any such contract should be subject available for review by state commissions. NANPA's appointment as pooling administrator should be subject to annual performance reviews and comment by affected carriers and all state commissions. Moreover, the PUCT suggests that the initial appointment be for a specified period (i.e., 3 years), at which time the FCC would have the option to renew its contract with NANPA or seek bids from other entities interested in providing this service.

Regarding paragraphs 187 and 188, there is little question that the return of uncontaminated NXX blocks or minimally contaminated ones can significantly improve the effectiveness of pooling and thereby extend the longevity and utilization of numbers in an NPA. The 10% contamination threshold suggested by the FCC may be acceptable, but if additional study shows that the level can be higher with minimal cost or if particular local circumstances warrant, states should have the flexibility to increase this threshold.

C. Pooling Implementation Issues

2. Administration

Consistent with its comments on the NANC report, the PUCT urges the FCC to adopt sequential number assignment for all carriers. Sequential number assignment is a critical element to successful implementation of thousand block pooling and can make the reclamation process much easier. In paragraph 191, the FCC asks whether states should have the power to implement sequential numbering policies or whether a national policy is more appropriate. A base policy could be created by the FCC, but states should be given the authority to grant exceptions to this requirement on a showing of good cause. To be effective, sequential numbering assignment should be mandatory, not voluntary. Carriers in competitive markets could be tempted to ignore a voluntary policy. Sequential numbering can also be used immediately by wireless carriers as a preparatory measure for their eventual implementation of LNP and pooling.

3. Cost Recovery

In paragraphs 102-104, the FCC seeks comment on cost recovery issues. The PUCT believes that the societal benefits of more efficient number utilization will outweigh the costs of the existing system, which is needlessly wasteful and inefficient. The PUCT does not believe that any of the administrative measures proposed by the FCC should impose significant costs on carriers. The PUCT agrees that it is appropriate for the costs of the administrative measures to be recovered under the existing NANP formula and from all carriers on a competitively neutral basis pursuant to §251(e)(2) of the FTA.

The FCC proposes a cost recovery scheme for number pooling similar to that adopted for implementation of interim and permanent local number portability (LNP). The PUCT anticipates that the costs of implementing thousand block pooling will be significant. If the FCC mandates implementation of thousand block pooling in the 100 largest MSAs, it is imperative that such implementation begin as soon as possible. While the PUCT believes thousand block pooling has significant potential to conserve numbering resources, the effectiveness of pooling will be diminished unless it can be implemented in the near future. The PUCT opposes implementation of an expensive number pooling measure if it is implemented too late to provide meaningful relief for Texas citizens, particularly those in the nations' 100 largest MSAs. For this reason, the PUCT again respectfully urges the FCC to move as quickly as reasonably possible toward implementation of thousand block pooling.

The PUCT concurs with the FCC's tentative conclusions regarding the categories of costs set forth in paragraph 197. The PUCT urges the FCC to clearly define what carrier-specific costs are "directly related" to thousand block pooling implementation and what costs are not. The PUCT further agrees with the conclusion in paragraph 199 that carrier-specific costs not directly related to thousand block pooling are not subject to §251(e)(2) and that no provision for collection of these costs should be made by the FCC.

The PUCT may comment further on cost recovery issues related to thousand block pooling in its reply comments to this NPRM as well as in any other appropriate forum.

D. Carrier Choice of Number Optimization Strategy

The industry should not be granted the right to pick and choose conservation measures, as proposed in paragraph 216. The PUCT is very concerned that allowing carriers the opportunity to pick and choose measures for number conservation, while forcing the states into certain actions without comparable flexibility, could threaten public interest. Recent experiences of the PUCT indicate that some carriers in the industry are becoming increasingly resistant to state implementation of number conservation measures. The PUCT's experience with NXX hoarding in the 817 NPA discussed previously is one example of this. Based on its recent experiences and those of other state commissions, the PUCT believes that allowing carriers to pick which number conservation measures they will implement would do little, if anything, to ease the current numbering crisis and strongly urges the FCC not to adopt such an approach.

VI. PRICING OPTIONS

In paragraphs 225 through 240, the FCC requests comments on pricing options to promote efficient utilization. The PUCT agrees with the FCC that a pricing scheme may be a possible long-range solution to the current allocation of numbers. Because many states, including Texas, need meaningful guidance on numbering issues now, the PUCT urges the FCC to focus its efforts on improvements to the existing numbering allocation system, including implementation of thousand block pooling and other conservation measures, that are more likely to have an immediate impact on the numbering crisis. Nevertheless, the PUCT offers the following general comments on some of the pricing questions posed by the FCC. The PUCT

may comment further on this issue in its reply comments in this NPRM as well as in other appropriate forums.

In paragraph 228, the FCC seeks comment on whether §251(e)(2) of the Telecommunications Act of 1996 provides sufficient authority for the FCC to impose a market-based pricing mechanism for numbering resources. The FCC further requests comments on whether §251(e)(1) of the Act provides a sufficient basis for the establishment of a price-based mechanism for allocation of numbering resources and if not, whether the FCC should seek such authority. The PUCT believes that §251(e)(1) and (2) are broad enough for the FCC to implement a market-based pricing mechanism for number resources. However, if the FCC is convinced that it currently lacks such authority, it should take appropriate steps to obtain this authority from Congress. The FCC can then decide when and if to exercise it.

Telephone numbers (TNs) are a finite resource. As such, it is essential that they are used as efficiently as possible. The current nationwide numbering crisis is not caused by a lack of numbers, but from a grossly inefficient use of those numbers. Many of the PUCT's comments made herein are intended to require the industry to utilize this limited resource more efficiently. In many ways numbering resources are analogous to natural resources, such as fossil fuels. In the current environment, communications providers do not pay for blocks of TNs. The lack of a pricing mechanism for numbering resources make the opportunity for hoarding very tempting. Society pays the price of no longer having access to the hoarded TNs, while the hoarder reaps the benefits of the TNs without compensating for consumption of a nonrenewable resource. A charge for TNs could encourage, indeed force the industry to develop more efficient number utilization measures.

VII. AREA CODE RELIEF

In paragraphs 249-261, the FCC seeks comment on various NPA relief measures. Specifically, the FCC seeks comment on the relative merits of geographic splits and overlays and whether overlays may be preferable to geographic splits from a numbering resource optimization perspective. In addition, the FCC seeks comment on whether additional federal guidelines for NPA relief planning are necessary. The FCC also requests comments on whether it should revisit its prohibition of service or technology specific overlays.

As a general matter, the PUCT believes that FCC adoption of the number conservation measures and procedures discussed herein would provide the greatest impact on preserving scarce numbering resources.

The PUCT supports the use of both overlays and geographic splits and recognizes the merits of both approaches. Neither of these approaches will be appropriate for all circumstances and the PUCT urges the FCC to continue to let state commissions decide on a case-by-case basis which form of relief is most appropriate.

One example of the need for states to decide the form of NPA relief is as follows. Currently, the PUCT is considering NPA relief in the 409 NPA. The 409 NPA is predominantly rural but has several mid-size urban areas. The public comments on the form of NPA relief for this area indicate a near 50-50 split of opinion between an overlay proposal (which under current FCC rules require implementation of 10 digit local dialing) and a 3-way geographic split (which would not require implementation of 10 digit dialing). NPAs with both rural and urban areas present a dilemma for implementation of 10 digit dialing. If the demand for NXX codes in such an NPA is driven primarily by the urban areas, the PUCT questions the fairness of imposing 10

digit dialing on rural areas who do not contribute significantly to the demand for NXXs. This is an example of why state commissions, with their unique understanding of local issues, should make the determination on the proper form of area code relief.

The PUCT strongly supports the FCC's proposal to revisit its current prohibition against service-specific or technology-specific overlays. The PUCT petitioned the FCC to authorize service-specific overlays for Dallas and Houston in 1996, and the FCC denied the request in the *Local Competition Second Report and Order.*[14] Since that time, at least three other states-Connecticut, Massachusetts and California-have requested the FCC to reconsider its current prohibition against this form of NPA relief. Service-specific or technology-specific overlays are appropriate for at least four reasons.

First, because of the ever-increasing frequency of NPA relief, service-specific or technology-specific overlays present another valuable and effective way to preserve scarce numbering resources.

Second, exclusion and segregation are not unduly discriminatory because wireless and wireline carriers are not currently direct competitors. One of the FCC's fundamental premises has been that competition exists between wireless and wireline carriers which should be protected. To do so, the FCC has prohibited NPA overlays with exclusion, segregation, or take-back features, but this prohibition does not account for current market circumstances, customers preferences, or the full costs of NPA relief. Exclusion and segregation are unduly discriminatory only if wireline and wireless carriers directly compete for market share. The PUCT does not

[14] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (Local Competition Second Report and Order).

believe that such direct competition exists. Customers use both wireline and wireless services, but there is little significant evidence that they do so interchangeably. Therefore, while a service-specific overlay may be discriminatory, it is not anti-competitive and is not unreasonably discriminatory. Moreover, this discrimination may be justified by technological differences and capabilities. The inability of wireless carriers to provide permanent number portability diminishes the effectiveness of number pooling and may accelerate the need for NPA relief. The PUCT has sought to foster competition in the telecommunications market through its authority under the Public Utility Regulatory Act[15] and the Federal Telecommunications Act of 1996.[16] However, based on its own experiences, the PUCT does not believe that the interests of competition are advanced by the FCC's prohibition against service-specific or technology-specific overlays.

Third, wireless carriers would not be unfairly burdened by take-backs for a service-specific overlay. If take-backs become a permissible part of a service-specific overlay, they will impose costs on wireless carriers and/or wireless customers. However, it is important to understand that all forms of NPA relief impose costs of some kind on both carriers and customers. The issue therefore is not whether NPA relief will create costs, but who will bear them. A wireless overlay with take-backs, like any overlay with take-backs would require many customers to change their telephone numbers. A split requires some customers to change all of their telephone numbers. The relative burdens and benefits of a service-specific overlay do not appear disproportionate in comparison to other forms of NPA relief.

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[15] TEX. UTIL. COD ANN Title II (Vernon Pamphlet 1998)./

[16] Telecommunications Act of 1996, Pub. L. NO. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151 *et seq.*).

Finally, service-specific overlays are consistent with numbering resource initiatives. All forms of number pooling architecture depend on the implementation of permanent number portability (LNP). Under the current Commission timetable, wireless carriers need not be LNP-capable until November 2002. The inability or unwillingness of wireless carriers to implement LNP will prevent them from participating in number pooling, which will diminish the NXX code savings that can be achieved from pooling. Unless and until wireless carriers implement LNP, a service-specific overlay will not impede the implementation of LNP or number pooling.

This technology-specific difference between wireless and wireline carriers justifies treating these forms of service differently and implementing a service-specific overlay in some circumstances. If and when wireless carriers become LNP-capable, the service-specific overlay could be converted to an all-service overlay.

Finally, it is appropriate for the FCC to consider all industry segments on this and other numbering issues. Clearly, it is inappropriate to unduly favor any industry segment in determining the reasonableness of NPA relief measures. For example, accommodations made for the wireless industry (i.e., delay in implementation of LNP, which in turn delays participation in number pooling by wireless carriers) can adversely affect other industry segments (i.e., wireline providers) and their customers. While reasonable accommodations should be made for the wireless industry, the PUCT cautions against doing so to the detriment of other industry segments and their customers.

For these reasons, the PUCT urges the FCC to reverse its current prohibition against service-specific or technology-specific overlays.

One other NPA relief issue not specifically raised in the NPRM is the evolving role of LM-NANPA in performing functions formerly performed by the Bell Operating Companies in their capacity as Code Administrator. Until earlier this year, Southwestern Bell Telephone Company (SWBT) was the Code Administrator in Texas. As such, SWBT coordinated NPA relief implementation and customer education issues on behalf of the industry and filed monthly status reports with the Commission on these issues. It is not entirely clear whether LM-NANPA can or will perform these functions in the future. If LM-NANPA does not perform these functions, it is important that someone be responsible for coordinating these activities on behalf of the industry. In the increasingly competitive telecommunications market, the question becomes: who should bear this responsibility? The PUCT contends that, for the immediate future, it may be appropriate for SWBT to perform these functions in Texas. However, as the market evolves, this may no longer be appropriate. The PUCT raises this issue for consideration by the FCC.

VIII. CONCLUSION

The PUCT believes that number conservation and optimization measures are necessary to preserve the NANP into the next century. Despite the fact that fewer NPAs were assigned in 1998 than in 1997, the NANP is a finite resource and must be utilized to the fullest extent possible. Initiatives by state commissions have catapulted number conservation efforts into the national arena, and, to the extent that national standards can be adopted, progress should continue.

The PUCT appreciates the opportunity to comment on the NPRM and urges the FCC to carefully consider the comments of all parties to this proceeding. Given the immediate for

solutions to the various numbering issues raised in the NPRM, the PUCT respectfully requests the FCC to act as expeditiously as possible to resolve these issues.

Respectfully submitted,

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman